

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

DONALD DAWSON-DURGAN,	:	Case No. 1:19-cv-382
	:	
Petitioner,	:	Judge Matthew W. McFarland
	:	Magistrate Judge Michael R. Merz
v.	:	
	:	
TIM SHOOP, Warden, Chillicothe	:	
Correctional Institution,	:	
	:	
Respondent.	:	

**ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 67),
OVERRULING OBJECTIONS, and DENYING MOTIONS (Docs. 65, 66)**

This action is before the Court on Magistrate Judge Michael R. Merz's Report and Recommendations (Doc. 67). The Court dismissed the habeas petition and closed this matter on March 31, 2023. (Doc. 58.) Petitioner moved to alter or amend the judgment under Fed. R. Civ. P. 59(e). (Doc. 60.) This Court denied that motion on June 30, 2023. (Doc. 63.)

Now, Petitioner has filed a motion for leave to appeal in forma pauperis (Doc. 65) and a motion for certificate of appealability (Doc. 66). Magistrate Judge Merz points out in the most recent Report that these motions are moot because the Court has already denied a certificate of appealability and certified to the Court of Appeals that any appeal from the final judgment would be objectively frivolous. (Report and Recommendations, Doc. 67, Pg. ID 3303.) He observes that Petitioner's arguments fail to grapple with the issue in a certificate of appealability, which is whether reasonable jurists would disagree.


The Court has reviewed the matter, including Petitioner's objections (Doc. 69), and agrees.

Accordingly, the Court **ORDERS** as follows:

- (1) The Court **ADOPTS** the Report and Recommendations (Doc. 67) in its entirety.
- (2) The Court **DENIES** the pending motions (Docs. 65, 66) for the reasons stated in the Report.
- (3) Petitioner is **DENIED** a certificate of appealability, because "jurists of reason" would not disagree with this conclusion. *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000).
- (4) The Court **CERTIFIES** pursuant to 28 U.S.C. § 1915(a) that, for the reasons expressed in the Report, an appeal of this Order adopting the Report would be objectively frivolous, and therefore **DENIES** plaintiff leave to appeal *in forma pauperis*. See *McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997), *overruled on other grounds*, *Jones v. Bock*, 549 U.S. 199, 203 (2007).

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: 
JUDGE MATTHEW W. McFARLAND